

**ITEL**

RECORDATION NO. 9460-2 Filed 1425

OCT 9 1987 -10 20 AM

**Istel Rail Corporation**

October 5, 1987

INTERSTATE COMMERCE COMMISSION  
San Francisco Street  
San Francisco, California 94133  
(415) 984-4000

Hon. Noretta R. McGee  
Secretary  
Interstate Commerce Commission  
Washington, DC 20423

*10/9/87*  
*10.20*  
ICC Washington, D. C.

Re: Amendment No. 4 dated October 1, 1987, to the Lease Agreement dated April 25, 1978, as amended, between Istel Corporation, Rail Division, and Mississippi Export Railroad Company

Dear Ms. McGee:

On behalf of Istel Rail Corporation, the above instrument, in four (4) counterparts, is hereby submitted for filing and recording pursuant to 49 U.S.C. Section 11303(a), along with the \$10 recordation fee.

Please record this Amendment under the Lease Agreement dated April 25, 1978, as amended, between Istel Corporation, Rail Division, and Mississippi Export Railroad Company, which was filed with the ICC on June 27, 1978, under Recordation No. 9460.

The parties to the aforementioned instrument are listed below:

Istel Rail Corporation (Lessor)  
55 Francisco Street  
San Francisco, California 94133

Mississippi Export Railroad Company (Lessee)  
4313 McInnis Street  
Moss Point, Mississippi 39563

This Amendment (i) adds to the Lease Agreement not less than fifty (50), but not more than sixty-one (61) boxcars bearing reporting marks from within the series MSE 1881-1941 as more fully described therein and (ii) deletes Equipment Schedule No. 10.B. in its entirety and replaces it with Equipment Schedule No. 10.D.

Please return to the undersigned the stamped counterparts not required for filing purposes, together with the ICC fee receipt and acknowledgment letter.

Very truly yours,

*Patricia Schumacker*

Patricia Schumacker  
Legal Department

:ps  
Enclosures

09/08/87

RECORDATION NO. 9460-8 Filed 1429

OCT 9 1987 -10 22 AM

INTERSTATE COMMERCE COMMISSION

AMENDMENT NO. 4

THIS AMENDMENT NO. 4 (the "Amendment") to that certain Lease Agreement (the "Agreement") made as of April 25, 1978 between Itel Corporation, Rail Division and **MISSISSIPPI EXPORT RAILROAD COMPANY** ("Lessee") is made this 1st day of October, 1987 between **ITEL RAIL CORPORATION**, as successor in interest to Itel Corporation, Rail Division ("Itel Rail"), and Lessee.

**RECITALS:**

- A. Itel Rail and Lessee are parties to the Agreement pursuant to which two hundred seventy-five (275) boxcars bearing reporting marks from within the series MSE 800-999 and MSE 1800-1880 (together with the boxcars listed on the Schedules attached hereto, the "Cars") have been leased and delivered by Itel Rail to Lessee.
- B. The Car bearing the reporting marks MSE 1835 was destroyed on February 4, 1987.
- C. Itel Rail and Lessee desire to add to the Agreement not less than fifty, but not more than sixty-one (61), boxcars bearing the reporting marks from within the series MSE 1881-1941 pursuant to the terms and provisions set forth herein.

**NOW THEREFORE**, in consideration of the premises and mutual agreements herein contained, the parties hereto agree to amend the Agreement as follows:

- 1. All terms defined in the Agreement shall have the meanings defined therein when used in this Agreement.
- 2. Effective as of February 4, 1987, Equipment Schedule No. 10.B. is deleted in its entirety and replaced by Equipment Schedule No. 10.D.
- 3. Equipment Schedules No. 12.A. and No. 12.B. are added to the Agreement in their entirety upon the final execution of this Amendment, provided that Itel Rail, at its sole option, may elect whether or not to deliver to Lessee all or a portion of the Cars listed on Equipment Schedule No. 12.B. by providing written notice to Lessee.
- 4. All references in the Agreement, as amended, to Equipment Schedule No. 10.B. shall be deemed to refer to Equipment Schedule No. 10.D.

THIS INSTRUMENT IS SUBJECT TO A SECURITY INTEREST IN FAVOR OF HELLER FINANCIAL, INC. UNDER THE HELLER FINANCIAL, INC. LOAN AND SECURITY AGREEMENT WITH ITEL RAIL CORPORATION DATED AS OF SEPTEMBER 30, 1986.

5. With respect to the Cars listed on Equipment Schedules No. 12.A. and No. 12.B. only, Section 2 of the Agreement is replaced by the following:

"2. The term of the Agreement with respect to each Car listed on Equipment Schedule No. 12.A. shall commence at 12:00 noon on the date and at the location that such Car is remarked pursuant to Subsection 3.A. of the Agreement, and shall expire as to all of the Cars described on Equipment Schedule No. 12.A., five (5) years from the date on which the first Car on such Schedule was remarked ('Initial Term')."
6. Subsections 3.A. and 3.C. of the Agreement, as amended by Amendment No. 2 dated August 23, 1985, shall apply to the Cars listed on Equipment Schedules No. 12.A. and No. 12.B., as well as to the Cars listed on Equipment Schedules No. 9.A., 10.C. and 10.D., except that with respect to the Cars listed on Equipment Schedules No. 12.A. and No. 12.B. only, the words "at its expense" in the second sentence of Subsection 3.A. and the words "at 12:01 a.m." in Subsection 3.A. are replaced by the words "at ITEL Rail's initial expense and subject to the recovery of such expense as provided in Subsection 6.B." and "at 12:00 noon", respectively.
7. With respect to the Cars bearing the reporting marks MSE 800-999, 1800-1849 and 1881-1941 only, the words "in the name of Lessee and ITEL Rail (or its assignee)" in Subsection 5.C. of the Agreement are replaced by the words "in the name of Lessee, Heller Financial, Inc. and ITEL Rail (or its assignee)."
8. With respect to the Cars bearing reporting marks from within the series 800-999 and 1800-1880 only, the words "all payments made to Lessee by other railroad companies for their use and handling of the Cars" in Subsection 6.A. of the Agreement are replaced by the words "all payments made to Lessee from the use and handling of the Cars while the Cars are on railroad lines other than the railroad lines owned by Lessee as of August 1, 1987".
9. With respect to the Cars listed on Equipment Schedules No. 12.A. and No. 12.B. only, Section 6 of the Agreement is replaced by the following:

**"6. Rent**

**A. Definitions**

- (i) 'Eligible Lines' is defined as the railroad lines owned and operated by Lessee as of the commencement date of this Agreement. Unless otherwise agreed by ITEL Rail and Lessee, any lines purchased by Lessee or added to the Eligible Lines during the Initial Term or any Extended Term are deemed to be the lines of another railroad company (a foreign road) for the purposes of determining Revenues (as defined in Subsection 6.A.(iii) hereinbelow).

- (ii) 'Revenue Rates' is defined as the hourly and mileage car hire rates prescribed for excluded boxcars under the ICC's decision in ICC Ex Parte No. 346, Sub-No. 19 served September 12, 1986, set forth in the Appendix to such decision in paragraph (c)(3) of 49 C.F.R. 1039.14.
- (iii) 'Per Diem Revenues' is defined as the total per diem revenues earned and due for the use and handling of the Cars on all railroad lines other than the Eligible Lines, including, but not limited to per diem calculated at the applicable Revenue Rates, whether or not collected and received by Itel Rail and undiminished by any claimed abatement, reduction or offset caused by any action or failure of Lessee.
- (iv) 'Mileage Revenues' is defined as the total mileage revenues earned and due for the use and handling of the Cars on all railroad lines other than the Eligible Lines, including, but not limited to mileage calculated at the applicable Revenues Rates, whether or not collected and received by Itel Rail and undiminished by any claimed abatement, reduction or offset caused by any action or failure of Lessee.
- (v) The 'Per Diem Base Rent'

- B. Itel Rail shall receive all Per Diem Revenues and Mileage Revenues earned by each Car prior to its Initial Loading. Each Car delivered pursuant to Subsection 3.A. shall become subject to the rental calculation under Subsection 6.C. upon the Initial Loading of such Car, provided, however, that after such Car becomes subject to Subsection 6.C., Lessor shall retain all Per Diem Revenues and Mileage Revenues until the amount of the Per Diem Revenues earned after Initial Loading equals Lessor's out-of-pocket expenses for the remark and delivery of the Cars to Lessee.
- C. Lessee agrees to pay the following rent to Itel Rail for the use of the Cars:
  - (i) In the event Per Diem Revenues earned in any calendar quarter or applicable portion thereof are equal to or less than the Per Diem Base Rent, Itel Rail shall retain a sum equal to one hundred percent (100%) of the total Per Diem Revenues.

- (ii) In the event Per Diem Revenues earned in any calendar quarter or applicable portion thereof exceed the Per Diem Base Rent, Itel Rail shall retain an amount equal to

(iii)

- D. (i) In the event that Itel Rail shall receive or earn for the use of any Cars, revenues calculated at hourly or mileage car hire rates that are lower in amount than those specified for excluded boxcars as provided in Subsection 6.A.(ii), as a result of any action or inaction by Lessee, Lessee shall pay to Itel Rail, within ten (10) days of Itel Rail's request, an amount equal to the difference between the Per Diem Revenues and Mileage Revenues such Cars would have earned at the Revenue Rates and the amount of revenues actually earned for such Cars.
  - (ii) Upon any abatement, reduction or offset as described in Subsection 6.A. (iii), Lessee shall, within ten (10) days of Itel Rail's request, reimburse Itel Rail for such amounts.
  - (iii) If, at any time during the Agreement, Lessee operates lines other than the Eligible Lines, Lessee shall supply Itel Rail with records which distinguish the movement of each Car on the Eligible Lines from the movement of such Car on any other lines operated by Lessee.
- E. The calculations required in Subsection 6.C. shall be made within five (5) months after the end of each calendar year ('Final Calculations'). However, Itel Rail shall, prior to making such calculations, retain the Per Diem Revenues and Mileage Revenues and other payments received by it on behalf of Lessee. Further, since the parties desire to determine on a quarterly year-to-date basis the approximate amounts owed under Subsection 6.C., Itel Rail shall within three (3) months after the end of each calendar quarter, calculate on a quarterly year-to-date basis the amount due both parties pursuant to this Subsection. Any amounts payable pursuant to the preceding sentence shall be paid promptly following such calculation, provided, however, that within twenty (20) days following the Final Calculation, any amount paid to either party in excess of the amounts required shall be refunded to the appropriate party.
  - F. If, with respect to any calendar quarter or quarters, the Per Diem Revenues and Mileage Revenues received by Itel Rail are less than

(such amount, the 'Minimum Amount', represents the Per Diem Revenues and Mileage Revenues which the Cars would have earned in the aggregate if the Cars had


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Rail may, at any time, at its option and upon not less than ten (10) days prior written notice to Lessee, terminate this Agreement as to such Cars as Itel Rail shall determine; provided, however, that Lessee may, at its option, within ten (10) days of receipt of such notice from Itel Rail, void such termination notice by paying to Itel Rail an amount equal to the difference between actual Per Diem Revenues and Mileage Revenues for such calendar quarter or quarters and the Minimum Amount for such calendar quarter or quarters.


- G. If, subsequent to the Initial Loading, any Car remains on Lessee's railroad lines for more than seven (7) consecutive days, excluding those days such Car is undergoing servicing, repair or alteration as provided for in Section 5 unless such servicing, repair or alteration was occasioned by the fault of Lessee, Itel Rail may, at its option and upon not less than twenty-four (24) hours prior written notice, terminate this Agreement as to such Car and take possession of such Car on Lessee's railroad tracks. If any such Car has remained on Lessee's railroad tracks for more than seven (7) consecutive days because Lessee has not given preference to the Cars as specified in Subsection 3.8., Lessee shall be liable for and remit to Itel Rail an amount equal to the Per Diem Revenues and Mileage Revenues which would have been generated if such Car had been in the physical possession and use of another railroad for the entire period during which such Car is on Lessee's railroad line.
- H. In the event damage beyond repair or destruction of a Car has been reported in accordance with Rule 107 of the AAR Field Manual of the Interchange Rules and Rules 7 and 8 of the AAR Code of Car Hire Rules and Interpretations-Freight, said destroyed Car will be removed from the rental calculations of this Agreement on the date car hire ceased as set forth in the aforementioned Rules 7 and 8. Itel Rail may, at its expense, replace any destroyed Car with similar equipment upon prior written notice from Itel Rail to Lessee.
- I. If any Car, while in the possession of Lessee, is damaged to the extent that such damage exceeds the AAR Depreciated Value ('DV') for such Car, Lessee shall notify Itel Rail within sixty (60) days following the date of the occurrence of such damage ('Damage Date'). If Lessee fails to notify Itel Rail within sixty (60) days of the Damage Date, Itel Rail has the right to engage an independent appraiser to inspect such Car to determine the extent of such damage. Regardless of whether or not Lessee has notified Itel Rail of the damage pursuant to this Subsection, Lessee shall remit to Itel Rail an amount equal to the DV of such Car within thirty (30) days of receipt of an invoice from Itel Rail.
- J. Any agreement between Lessee and any other party with respect to the Cars ('Third Party Agreement(s)') shall be void without Itel Rail's prior written approval. Itel Rail shall notify Lessee not less than ten (10) days prior to placing any Cars into any agreements to enhance the utilization of such Cars.

- K. Itel Rail and Lessee agree to cooperate with and to assist each other in any reasonable manner requested to establish and pursue proper claims against parties responsible for loss or destruction of, or damage to, the Cars, provided, however, that this shall not affect their respective obligations under this Section 6."
10. The words "under any financing agreement entered into by Itel Rail in connection with the acquisition of the Cars" in Section 7 of the Agreement are replaced by the words "under any financing agreement pursuant to which Itel Rail's obligations thereunder are or become secured by the Cars which are the subject of this Agreement".
11. With respect to the Cars listed on Equipment Schedules No. 12.A. and No. 12.B., as well as the Cars listed on Equipment Schedules No. 9.A., No. 10.C., No. 10.D. and No. 11.A., the words "thirty (30) days" in Section 9 of the Agreement are replaced by the words "one hundred twenty (120) days."
12. Except as expressly modified by this Amendment, all terms and provisions of the Agreement shall remain in full force and effect.
13. This Amendment may be executed by the parties hereto in any number of counterparts and all such counterparts taken together shall be deemed to constitute one and the same instrument.

ITEL RAIL CORPORATION

By:   
Title: President  
Date: October 1, 1987

MISSISSIPPI EXPORT RAILROAD COMPANY

By:   
Title: Vice President - General Manager  
Date: September 10, 1987

STATE OF CALIFORNIA     )  
                                  ) ss:  
COUNTY OF SAN FRANCISCO )

On this 1st day of October, 1987, before me personally appeared Desmond P. Hayes, to me personally known, who being by me duly sworn says that such person is President of Itel Rail Corporation, that the foregoing Amendment No. 4 was signed on behalf of said corporation by authority of its board of directors, and such person acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.



Ginny E. Hanger  
Notary Public

STATE OF MISSISSIPPI     )  
                                  ) ss:  
COUNTY OF JACKSON     )

On this 10th day of September, 1987, before me personally appeared R. A. Paul, to me personally known, who being by me duly sworn says that such person is Vice President - General Manager of Mississippi Export Railroad Company, that the foregoing Amendment No. 4 was signed on behalf of said corporation by authority of its board of directors, and such person acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Norma Lee  
Notary Public

MY COMMISSION EXPIRES NOV. 4, 1990




EQUIPMENT SCHEDULE NO. 10.D.

Itel Rail Corporation hereby leases the following Cars to Mississippi Export Railway Company subject to the terms and conditions of that certain Lease Agreement, as amended, dated as of April 25, 1978.

A.A.R. Mech. Desig.	Description	Numbers	Length	Dimensions		Height	Doors Width	No. of Cars
				Inside Width				
XM	70-Ton 50'6" Inside Length, Plate C With Nailable Steel Floors, With Center of Car 20" Cushioning, Single Sheath Boxcar	MSE 1825-1834, 1836-1848	50'6"	9'6"		10'7"	2-8' Plug	23

This schedule replaces Equipment Schedule No. 10.B. to the Agreement which was fully executed by the parties on October 28, 1985.

ITEL RAIL CORPORATION

By: 

Title: President

Date: October 1, 1987

MISSISSIPPI EXPORT RAILROAD COMPANY

By: 

Title: Vice President - General Manager

Date: September 10, 1987

EQUIPMENT SCHEDULE NO. 12.A.

Itel Rail Corporation hereby leases the following Cars to Mississippi Export Railway Company subject to the terms and conditions of that certain Lease Agreement, as amended, dated as of April 25, 1978.

A.A.R. Mech. Desig.	Description	Numbers	Length	Dimensions		Doors	No. of Cars
				Inside Width	Height		
XM	70-Ton 50'6" Inside Length, Plate C With Nailable Steel Floors, Cushion Underframe, Single Sheath Boxcar	MSE 1881-1930	50'6"	9'6"	11'1"	10' Sliding	50

ITEL RAIL CORPORATION

By: *JD Hayes*

Title: President

Date: October 1, 1987

MISSISSIPPI EXPORT RAILROAD COMPANY

By: *R. A. Paul*

Title: Vice President - General Manager

Date: September 10, 1987

EQUIPMENT SCHEDULE NO. 12.B.

Itel Rail Corporation hereby leases the following Cars to Mississippi Export Railway Company subject to the terms and conditions of that certain Lease Agreement, as amended, dated as of April 25, 1978.

A.A.R. Mech. Desig.	Description	Numbers	Length	Dimensions Inside Width	Height	Doors Width	No. of Cars
XM	70-Ton 50'6" Inside Length, Plate C With Nailable Steel Floors, Cushion Underframe, Single Sheath Boxcar	MSE 1931-1941	50'6"	9'6"	11'1"	10' Sliding	11

ITEL RAIL CORPORATION

By: AP Hayes

Title: President

Date: October 1, 1987

MISSISSIPPI EXPORT RAILROAD COMPANY

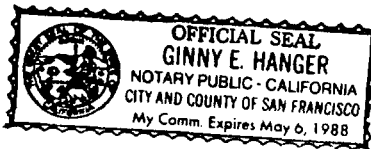
By: R. A. Baul

Title: Vice President - General Manager

Date: September 10, 1987

STATE OF CALIFORNIA       )  
                                      ) ss:  
COUNTY OF SAN FRANCISCO )

On this 1st day of October, 1987, before me personally appeared Desmond P. Hayes, to me personally known, who being by me duly sworn says that such person is President of Itel Rail Corporation, that the foregoing Equipment Schedules No. 10.D., No. 12.A. and No. 12.B. were signed on behalf of said corporation by authority of its board of directors, and such person acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.



Ginny E. Hanger  
Notary Public

STATE OF MISSISSIPPI )  
                                      ) ss:  
COUNTY OF JACKSON )

On this 10th day of September, 1987, before me personally appeared R. A. Paul, to me personally known, who being by me duly sworn says that such person is Vice President - General Manager of Mississippi Export Railroad Company, that the foregoing Equipment Schedules No. 10.D., No. 12.A. and No. 12.B. were signed on behalf of said corporation by authority of its board of directors, and such person acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Donna Lee  
Notary Public

MY COMMISSION EXPIRES NOV. 4, 1990